

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

KEVIN P. WALKER and
ANGIE WALKER

PLAINTIFFS

v. Civil No. 05-5203

DEPUTY JOE POWELL,
BENTON COUNTY, ARKANSAS
SHERIFF'S DEPARTMENT, in
his individual capacity

DEFENDANT

O R D E R

Now on this 7th day of August, 2006, comes on for consideration **Plaintiff's Motion To Dismiss Defendant's Motion For Summary Judgment** (document #14), and from said motion, and a review of the pleadings, the Court finds and orders as follows:

1. On July 25, 2006, defendant filed a Motion For Summary Judgment. This was one week after the deadline for filing dispositive motions imposed by the Court's Scheduling Order. Leave for the belated filing was not sought, and no reason was given why the motion was not timely filed.

Plaintiff contends that the Motion For Summary Judgment should be summarily dismissed because of the delay. In the alternative, plaintiff asks for "a reasonable time to file a formal response."

2. While the Court agrees with plaintiff that the deadlines in the Scheduling Order should be adhered to, it is not inclined to grant plaintiff's motion. There is a preference in the law for issues to be decided on their merits, rather than on

technicalities. Foman v. Davis, 371 U.S. 178 (1962). Given the shortness of the delay, the Court does not believe there could be any possible prejudice to plaintiff - nor is any alleged - and the Court finds that it is appropriate to allow a response, and then to resolve the Motion For Summary Judgment on its merits.

IT IS THEREFORE ORDERED that **Plaintiff's Motion To Dismiss Defendant's Motion For Summary Judgment** (document #14) is **denied**, and plaintiff is allowed up to and including August 21, 2006, to file a response to defendant's Motion For Summary Judgment.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE